

Court of Appeals, State of Michigan

ORDER

People of MI v Alton Jones

Docket No. 275645

LC No. 04-006761-01 & 04-007485-01

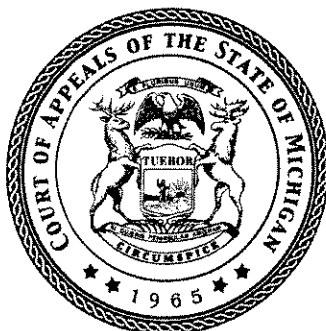
Peter D. O'Connell
Presiding Judge

Patrick M. Meter

Stephen L. Borrello
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court orders that defendant's sentence is VACATED, and the matter is REMANDED with direction to allow defendant to withdraw his plea. At the plea proceeding, the trial court specifically stated that defendant would be sentenced to treatment, and would not be sent to prison. (11/23/04 Tr, pp 9-10). A defendant who pleads no contest in reliance upon a judge's preliminary evaluation with regard to an appropriate sentence has an absolute right to withdraw the plea if the judge later determines that the sentence must exceed the preliminary evaluation. *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). Where the trial court has determined that it cannot sentence defendant to only treatment, it must allow defendant to withdraw his plea.

We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 26 2007

Date

Sandra Schultz Mengel
Chief Clerk